

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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REBECCA MOSHER,

Plaintiff,

v.

Civil Action No.  
8:14-CV-0314 (DEP)

CAROLYN A. COLVIN, Commissioner of  
Social Security,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

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57 Court Street  
Plattsburgh, New York 12901

MARK SCHNEIDER, ESQ.

FOR DEFENDANT

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DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

## ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was conducted in connection with those motions on November 21, 2014, during a telephone conference held on the record. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination did not result from the application of proper legal principles and is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in her appeal.

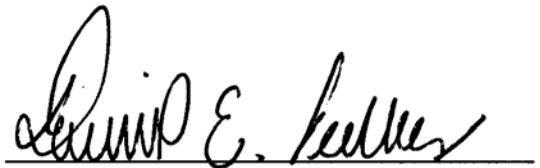
After due deliberation, and based upon the court's oral bench decision, a transcript of which is attached and incorporated herein by reference, it is hereby

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

- 1) Plaintiff's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.
- 3) The matter is hereby REMANDED to the Commissioner, without a directed finding of disability, for further proceedings consistent with this determination.
- 4) The clerk is respectfully directed to enter judgment, based upon this determination, remanding the matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: November 21, 2014  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
REBECCA MOSHER,

Plaintiff,

vs.

14-CV-314

CAROLYN COLVIN,  
Commissioner of Social Security,

Defendant.  
-----x

*DECISION* (Telephone Conference) November 14, 2014

James Hanley Federal Building, Syracuse, New York

HONORABLE DAVID E. PEEBLES

United States Magistrate-Judge, Presiding

A P P E A R A N C E S

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1           THE COURT: All right. Thank you. I'll have to  
2 let that be the last word. I appreciate your excellent  
3 written and oral presentations. Let me begin with a little  
4 background information.

5           According to the record in this case, the plaintiff  
6 was born in January of 1967. If my math serves me correctly,  
7 she is currently 47 years of age and was 45 years old at the  
8 time of the Administrative Hearing in this matter. She lives  
9 in St. Regis Falls with her mother and a niece. She has a  
10 tenth grade education. She left school because, according to  
11 her, she could not deal with people. She has since achieved  
12 a GED degree.

13           She clearly suffers from a diagnosed mental  
14 condition. It has been variously diagnosed, including by  
15 treating sources, as anxiety disorder and depressive  
16 disorder. Dr. Hartman, the consultative psychological  
17 examiner, diagnosed her with having a panic disorder with  
18 agoraphobia and dysthymic disorder. She currently treats  
19 with Citizen Advocates including Nurse Practitioner Harry  
20 Hill and Licensed Counselor Julia Kingsley, the latter two  
21 times per month. She has been prescribed Fluoxetine, which  
22 is the generic version of Prozac as I understand it.

23           Physically she has been diagnosed with Hidradenitis  
24 Suppurativa (HS) or skin lesions. She treats for that with  
25 Alice Hyde Medical Center. And she underwent surgery for

1 removal of one of the lesions in November of 2010. She last  
2 worked in 2003, babysitting for a niece, and before that in  
3 chambermaid positions.

4           Procedurally, she applied for Supplemental Security  
5 Income, or SSI, benefits on June 17, 2011, alleging an onset  
6 date of January 1, 2004. A hearing was conducted in 2012 by  
7 Administrative Law Judge -- September 12, 2012, to be  
8 precise, by Administrative Law Judge Arthur Patane. ALJ  
9 Patane issued a decision on November 9, 2012, finding that  
10 the plaintiff was not disabled and, therefore, denying her  
11 application for benefits.

12           That decision was upheld when the Social Security  
13 Administration Appeals Council denied review on March 5,  
14 2014, making the ALJ's decision a final determination of the  
15 agency. In his decision, succinctly stated, the  
16 Administrative Law Judge found that at Step Two only the  
17 Affective and Anxiety Disorder constituted severe  
18 impairments, rejecting, among other things, the HS. Then he  
19 considered listings 12.04 and 12.06 and concluded that  
20 plaintiff's mental conditions did not meet or medically equal  
21 either of those listings.

22           He then turned to determination of the plaintiff's  
23 RFC and concluded that she retains Residual Functional  
24 Capacity, notwithstanding her medical conditions, to perform  
25 a full range of work at all exertional levels with the

1 following limitations: She's capable of performing unskilled  
2 work which involves little or no judgment to do simple,  
3 routine or repetitive tasks that can be learned on the job in  
4 a short period of time; she can occasionally but not  
5 frequently interact with supervisors, co-workers and the  
6 public due to social anxiety; she can have occasional changes  
7 in the work setting; and due to difficulty managing stress,  
8 she can make simple decisions but not complex ones.

9           Thereafter concluded based upon that RFC that she  
10 is unable to perform the past relevant work. He didn't find  
11 any past relevant work to speak of. And applying the grids  
12 concluded that she is not disabled and that the  
13 non-exertional limitation does not sufficiently erode the job  
14 base on which the grids are predicated to warrant vocational  
15 expert testimony.

16           The first issue to be addressed concerns  
17 plaintiff's HS condition. Clearly she has a diagnosed and  
18 chronic HS condition. That's referenced at Administrative  
19 Transcript 289. She receives treatment. She has testified  
20 that she's always had some lesions. That's at page 34 of the  
21 Transcript. Some are as large as golf balls. That's at  
22 page 35. She has three to four flair-ups per year which can  
23 last between weeks and months. That's at page 35. When she  
24 gets a lesion under her arm, it limits the use of her arm.  
25 That's at page 36. When they appear in her groin area, she's

1 unable to sit comfortably. That's at page 37.

2           There is medical evidence, including a report of  
3 Dr. Woodhouse, her surgeon, from November, the year she had  
4 her surgery, that she suffers from infra-mammary and axillary  
5 hydradenitis. That's at page 177. And as we discussed,  
6 Dr. Wassef determined that there was significant scarring,  
7 including under both, in the areas of both axilla. That's at  
8 page 239.

9           In my view the showing required at Step Two is  
10 relatively modest and is met in this case by the plaintiff,  
11 by her testimony and by the medical evidence presented. I  
12 agree with Mr. Schneider that this is a type of chronic  
13 condition that is not curable and it is only treatable. The  
14 ALJ should have considered it at Step Two and should have  
15 considered and explained why he felt either she did or did  
16 not meet listing 8.06, and in doing so should have considered  
17 the factors listed at 8.00C, and did not. So I conclude that  
18 that was error and the determination is not supported by  
19 substantial evidence to that effect.

20           Turning to the mental condition, I agree that the  
21 mental condition itself does not meet or medically equal the  
22 listings 12.04 and 12.06. I think that I could say that that  
23 determination is supported by substantial evidence.  
24 Counselor Kingsley did not identify any marked limitations.  
25 I do have some concern with regard to the GAF, or Global



1 Assessment of Functioning, notations by Nurse Practitioner  
2 Hill. Have indicated that there are several in the 43 to 45  
3 range under the DSM-IV that indicates a person with serious  
4 symptoms such as suicidal ideations, severe obsessional  
5 rituals, and frequent shoplifting rendering serious  
6 impairment in social, occupational or school functioning,  
7 such as a lack of friends or an inability to maintain  
8 employment.

9 I understand the DSM-V has done away with GAF  
10 scoring and also GAF scoring is primarily intended for  
11 treatment purposes and not for purposes of proving mental  
12 disability. However, certainly it suggests to me that the  
13 ALJ should have, in formulating his RFC should have taken the  
14 mental condition into account.

15 In my view the confluence or combination of HS,  
16 plaintiff's mental condition, her obesity based upon her  
17 testimony should have been taken into account in the RFC  
18 determination, which I find is not supported by substantial  
19 evidence.

20 On the other hand, although I'm asked to remand  
21 with a directed finding of disability, that is warranted only  
22 when there is persuasive proof of disability in the record  
23 and a further development of the record would not serve any  
24 purpose. In my view that standard is not met. And the  
25 reason why the matter should be set aside and remanded is for

1 the ALJ to consider the HS and whether she meets or medically  
2 equals listing 8.06 and for a full explanation of either why  
3 she does or why she doesn't, and for a better explanation of  
4 the RFC and why the combination of obesity, plaintiff's  
5 mental condition and her HS doesn't warrant a more  
6 restrictive Residual Functional Capacity.

7           So, in short, I grant judgment on the pleadings to  
8 the plaintiff. I will vacate the determination of the agency  
9 and remand for further proceedings consistent with my  
10 decision.

11           Again, thank you both, and I hope you have a good  
12 weekend.

13           MR. SCHNEIDER: Thank you.

14           MS. MYERS: Thank you, Your Honor.

15                           \*                           \*                           \*

C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York,  
do hereby certify that pursuant to Section 753, Title 28,  
United States Code, that the foregoing is a true and correct  
transcript of the stenographically reported proceedings held  
in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the  
Judicial Conference of the United States.



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EILEEN MCDONOUGH, RPR, CRR  
Federal Official Court Reporter